
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

§

versus

§

CASE NO. 4:03-CR-159

PATRICK WADE SCHNITKER

§

§

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Came on for consideration the above-referenced criminal action, this court having heretofore referred the request for revocation of Defendant's supervised release to the United States Magistrate Judge for proper consideration. The court has received the report of the United States Magistrate Judge pursuant to its order. On April 28, 2007, Defendant filed an objection arguing that two years imprisonment exceeds the statutory maximum allowed by statute for his original offense. Defendant asserts that adding his time served plus the period of supervised release exceeds the five-year statutory maximum for his original conviction for fraudulent use of access device.

The court, having made a *de novo* review of the objection raised by Defendant, is of the opinion that the objection is without merit. Defendant's argument is misplaced. Title 18 of United States Code, Section 3583(e)(3) provides that for a class D felony, the sentence upon revocation of supervised release may be up to two years imprisonment. The federal criminal statutory scheme envisions that there can be at least two components of a sentence: 1) a term of imprisonment up to the statutory maximum permitted by statute, and 2) a term of supervised release delineated in § 3583(e) with the potential for *additional prison time* if supervised release is violated. *United States v. Hinson*, 429 F.3d 114, 115-16 (5th Cir. 2005). To adopt Defendant's argument undermines the statutory sentencing scheme.

Based on the foregoing, the court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the court. It is, therefore, **ORDERED** that the Magistrate Judge's Report is **ADOPTED** as the opinion of the court.

It is further

ORDERED that Defendant's supervised release is hereby **REVOKEKD**. It is finally **ORDERED** that Defendant is sentenced to a term of imprisonment for twenty-four (24) months, with no supervised release to follow.

SIGNED at Beaumont, Texas, this 20th day of July, 2007.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE